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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,589	01/27/2004	Takaaki Shimada	2038-323	8968

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EXAMINER

EVANS, CHIVONNE LAURIE

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/764,589	SHIMADA ET AL.	
	Examiner	Art Unit	
	Chivonne L. Evans	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 8-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4 and 6-7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by **Yamamoto et al. (EP 0761193)**. With regards to claims 1-4 and 7, Yamamoto teaches an absorbent article of pants type that comprising a laminated panel with liquid permeable topsheet, liquid impermeable bottom sheet with a core panel disposed in between as well as front waist, rear waist and crotch regions (**Column 2, lines 21 –31 and Figure 1**). Yamamoto also teaches that there are first (around waist region), second (around the leg openings) and third (crosses upper end of core panel in the crotch region and the second elastic means) elastic means. (**Column 2, lines 31 – 48 and Figure 1, 2, and 3**), whereas the elastic means are bonded between the top and backsheet (**Column 5, lines 55-58 and Column 6, lines 42-48**). With regards to claim 6 of the application, the elastic means taught by Yamamoto also have a free portion that extend along the side panels of the front **17** and rear waist **18** region and a fixed portion which are welded together which at side edges **20a** and **20b** of **Figure 1**. Whereas the freed portion being where the elastic means are not welded to side edges **20a** and **20b**.

Claim Rejections - 35 USC § 103

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3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Yamamoto et al. (EP 0761193)** in view of **Yamamoto et al. (EP 0761194)**. **Yamamoto et al. (EP 0761193)** teaches the invention substantially as claimed except for the third inner layer which the leg surrounding elastics are separated from the second and third elastic means as claimed by the applicant. **Yamamoto et al. (EP 0761194)** teaches a crotch region structure with a crotch section topsheet and crotch section bottom sheet in which the leg elastics (**Figure 3,15**) are disposed between an outer sheet and a back sheet in which the waist elastic members **13** and **14** of **Figure 1** are disposed between, (**Column 4, 10-55**) to allow separate stretching means around the leg and waist openings. It would have been obvious to one skilled in the art at the time of the invention to modify **Yamamoto et al. (EP 0761193)** with an additional sheet layer to provide individual stretching capability of the leg and waist openings according to the movement of the wearer of the article, as taught by **Yamamoto et al. (EP 0761194)**.

Response to Arguments

5. Applicant's arguments filed 12/06/2005 have been fully considered but they are not persuasive. Newly submitted claims 8-20 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims 1-7 and claims 8-20 would be related as combination and subcombination.

Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the elastic members will still function, by contracting and expanding without the claimed middle portion. The subcombination has separate utility such as securing elastic elements between top and bottom sheets of stretchable material.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 8-20 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

With regards to the applicants argument:

- a. The applicant argues that the free portion of elastic members is not clarified.
6. The examiner has determined that the freed portions of the elastic means as disclosed above, is the portion of the means where there is no welding connecting the elastic members to the side edges as seen in Figure 1 where Yamamoto has a free portion that extend along the side panels of the front **17** and rear waist **18** region and a fixed portion which are welded together which at side edges **20a** and **20b** of **Figure 1**.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chivonne L. Evans whose telephone number is 571-272-8686. The examiner can normally be reached on between 6:30-3:30, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Chivonne L Evans

Examiner

Art Unit 3761

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TATYANA ZAKHARCHUK
SUPERVISORY Patent Examiner

